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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 DEBORAH D. PETERSON, Personal
4 Representative of the Estate
5 of James C. Knipple (Dec.),
6 et al.,

Plaintiffs,

v.

01 CV 2094 (RCL)
and 01 CV 2684 (RCL) (D.D.C.)

7 ISLAMIC REPUBLIC OF IRAN,
8 et al.,

Defendants.

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10 June 27, 2008
11 11:15 a.m.

12 Before:

13 HON. JOHN G. KOELTL,

District Judge

15 APPEARANCES

16 SALON MARROW DYCKMAN NEWMAN & BROUDY, LLP
17 Attorneys for Plaintiffs
18 BY: LIVIU VOGEL
19 WILLIAM CORTELLESA

20 LAW OFFICES OF THOMAS FORTUNE FAY, PA
21 Attorneys for Plaintiffs
22 BY: THOMAS FORTUNE FAY

23 PERLES LAW FIRM, PC
24 Attorneys for Plaintiffs
25 BY: STEVEN R. PERLES

COOK COLLECTION ATTORNEYS, PLC
Attorneys for Plaintiffs
BY: DAVID J. COOK

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A P P E A R A N C E S (continued)

WHITE & CASE

Attorneys for Defendants

BY: FRANK PANOPOULOS

CHRISTIAN HEYNE

DAVIS WRIGHT TREMAINE, LLP

Attorneys for Citibank

BY: SHARON L. SCHNEIER

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1 (In open court)

2 THE DEPUTY CLERK: Peterson vs. Republic of Iran. All
3 parties please state who they are for the record.

4 MR. PANOPOULOS: Good morning, your honor. Frank
5 Panopoulos, law firm of White & Case, representing third-party
6 with interest Clearstream Banking, SA.

7 Your Honor, on my right is Mr. Christian Heyne. He is
8 the chief of the legal department of Clearstream Banking, SA.

9 THE COURT: How is his name spelled?

10 MR. HEYNE: H-E-Y-N-E.

11 MS. SCHNEIER: Sharon Schneier for -- from Davis
12 Wright Tremaine, representing Citibank.

13 MR. VOGEL: Good morning, your honor. Liviu Vogel of
14 Salon, Marrow, Dyckman, Newman & Broudy, representing the
15 plaintiffs. On my right is my associate, William Cortellessa,
16 and to my far right are three attorneys that represent the
17 plaintiff in the Washington, DC action. They will introduce
18 themselves.

19 MR. COOK: Good morning, your honor. David Cook on
20 behalf of Deborah D. Peterson.

21 MR. FORTUNE FAY: Good morning, your honor. Thomas
22 Fortune Fay on behalf of Deborah D. Peterson, et al.

23 MR. PERLES: Good morning, your honor. Steven Perles
24 on behalf of Deborah Peterson, et al.

25 THE COURT: Good morning, all. All right.

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1 MR. PANOPOULOS: Your Honor, if I may.

2 Your Honor, just to thank the Court again for
3 appreciating the situation that the restraints have caused and
4 for allowing this hearing to occur today.

5 I just wanted to remind the Court that the testimony
6 that we will hear relates to the information that was covered
7 by Judge Lambert's protective order. And the testimony will be
8 both confidential material that will be under seal under that
9 protective order, as well as information that is confidential
10 and proprietary with respect to Clearstream's banking services.
11 So I would ask the Court at this time if we could have this
12 proceeding under seal.

13 THE COURT: All right. What I would like to do is
14 begin it not under seal until you reach such point that you're
15 going to deal with confidential information.

16 MR. PANOPOULOS: Yes, your Honor.

17 THE COURT: At that point I've read the papers, I
18 specifically ask that the order be filed in the public record.
19 And I appreciate that information is subject to the protective
20 order from Judge Lambert.

21 I've read the papers. I appreciate that not only is
22 it subject to the confidentiality order, but that it does deal
23 with confidential, proprietary information, and there is a
24 compelling reason for closure when that information is
25 discussed. So the narrowest remedy for that, and one which

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1 would accomplish the goals of keeping the information
2 confidential, is to seal only the portion of the hearing that
3 deals specifically with the confidential information, though I
4 fully appreciate that most of the testimony would probably be
5 confidential because it deals with such things as specific bank
6 account matters, which are well recognized to be confidential.

7 MR. PANOPOULOS: Yes. And the way that we'll present
8 the evidence is that for the first section, it's material
9 that's not confidential, and then after it is.

10 So with your Honor's permission, I'd like to call
11 Mr. Mark -- so nervous I forgot his name. Mr. Mark Gem to the
12 stand. And I'd like to distribute a binder, your Honor, that
13 has the information that we'll be going over.

14 THE COURT: Did anyone wish to be heard before we
15 start?

16 MR. VOGEL: Your Honor, Liviu Vogel for the
17 plaintiffs. As such time as the information becomes
18 confidential and the testimony will then be sealed, we request
19 that the Court voir dire those persons who are in attendance to
20 ensure that they are the proper persons under the existing
21 protective order that can receive that kind of information.

22 Thank you.

23 THE COURT: Sure. Well, when you talk about voir
24 dire, I'm sure when we reach that point -- I imagine there are
25 probably people coming in on other matters. This will be very

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1 short before I have to go to another sentencing matter, and I'm
2 going to take a break. And you all probably know the people in
3 the courtroom after I ask people who are not directly involved
4 in this proceeding to leave. So we'll deal with that when we
5 come to it.

6 MR. PANOPOULOS: Very well. Thank you.

7 MARK GEM,

8 called as a witness by the Defendants,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. PANOPOULOS:

12 Q. Mr. Gem, could you please tell the Court what your
13 functions are at Clearstream.

14 A. Clearstream, I'm a member of the executive committee. And
15 I look after a number of departments, including the network
16 management function, which is responsible for the subdeposit of
17 the securities that Clearstream maintains on behalf of its
18 customers in various countries, including the United States.

19 Q. And are you a member of the executive committee?

20 A. Yes, indeed I am.

21 Q. And what other functions do you have there?

22 A. I'm also responsible for such things as corporate planning,
23 corporate strategy, marketing.

24 THE COURT: Do you have a title?

25 THE WITNESS: Head of business management, your Honor.

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Gem - direct

1 THE COURT: Is that -- is that an officer of the
2 company?

3 THE WITNESS: Yes, indeed it is.

4 THE COURT: Doesn't have a title like managing
5 director or vice president or anything like that?

6 THE WITNESS: Indeed, executive vice president.

7 THE COURT: Go ahead.

8 BY MR. PANOPOULOS:

9 Q. And, Mr. Gem, you have knowledge of the omnibus account
10 that's at issue here?

11 A. Yes, I do.

12 THE COURT: Could you just tell me briefly what
13 Clearstream is.

14 THE WITNESS: Clearstream -- the correct name is
15 Clearstream Banking, SA. Clearstream Banking, SA, is a bank in
16 Luxembourg. It is also a securities settlement system
17 recognized and regulates as such by the European system of
18 central banks.

19 We are a company which was founded as a security
20 settlement system in 1971 by a consultant of US and
21 international banks in order to act as a depository for
22 Eurobonds; that is to say, to act in a function which is
23 equivalent to that performed, say, by the depository trust and
24 clearing corporation here in New York or by, say, Euroclear
25 Bank in Brussels.

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Gem - direct

1 We became a bank in 1994, at that time known as
2 Citadel Bank. We became a part of the Deutsche BESA group,
3 which is the group owned by the -- or controlled by the German
4 stock exchange in 2002. The German stock exchange is a
5 100 percent shareholder of Clearstream Banking, SA, via
6 Luxembourg Holding Company Clearstream International, SA, of
7 which I'm also an officer.

8 THE COURT: Go ahead.

9 MR. PANOPOULOS: Your Honor, if you would turn to the
10 Exhibit B in the Tab. There are four charts that described the
11 clearing services that Clearstream provides. And for the
12 benefit of the Court --

13 THE COURT: We are at Tab?

14 MR. PANOPOULOS: On Tab B, Exhibit B, your Honor, for
15 the benefit of the Court and the plaintiffs and the others.

16 I would just ask Mr. Gem if he could just describe
17 what is in the charts and explain Clearstream's delivery and
18 settlement services.

19 THE COURT: Just for the record of the proceeding, I
20 take it there's no objection to receiving CDL Exhibit B in
21 evidence, right?

22 MR. VOGEL: No objection, your Honor.

23 THE COURT: Okay.

24 (Defendant's Exhibit B received in evidence)

25 MR. PANOPOULOS: Just for the record, Exhibit A are

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Gem - direct

1 the restraining notices served on -- and the writ of attachment
2 on Citibank. And I didn't want to refer to them because I
3 didn't want to get into confidential material at this time.
4 Those are already in the record.

5 THE COURT: Okay.

6 BY MR. PANOPOULOS:

7 Q. So, Mr. Gem, could you please describe what is in each of
8 the charts that is in Exhibit B.

9 A. The first chart is a schematic view of the custody
10 arrangements that we organized for the subdeposit of foreign
11 securities; that is to say, securities which are issued
12 elsewhere than through Clearstream Banking itself in
13 Luxembourg. And in this case, I've chosen the person as an
14 example of the subdeposit of a US issued bond. In this case we
15 take an illustrative example, say, of a security issued by the
16 European investment bank. What this is showing is how the
17 subdeposit of our customer's balances would feed into the
18 omnibus account that we maintained Clearstream Banking
19 maintains with Citibank here in New York and how that balance
20 would contribute to the total balance of security interests or
21 interests in that security at the depository trust and clearing
22 corporation here in New York.

23 So if we start at the bottom of the chart, you'll see
24 that the European --

25 THE COURT: Can I ask you just -- maybe you're going

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Gem - direct

1 to get to this. You're talking about a bond, ISIN and
2 identifying number?

3 THE WITNESS: Indeed.

4 THE COURT: Is that for a specific bond? Is that the
5 identifying number for, for example, a series of -- a specific
6 series of a bond, given maturity date, given interest rate, so
7 that you can identify it? That's a bond? That's the
8 identification number for that bond?

9 THE WITNESS: It is --

10 THE COURT: There can be lots of those bonds issued,
11 but that's the identifying number for that -- that particular
12 bond?

13 THE WITNESS: For that particular bond, indeed, which
14 would generally be issued in the form of a global note in which
15 the interests of all of the holders and notice of that notes
16 are effectively --

17 THE COURT: There can be lots of bonds with that
18 number, yes or no?

19 THE WITNESS: There can be lots of positions in that
20 bond with that number, but the issue itself will have a unique
21 identifier.

22 BY MR. PANOPOULOS:

23 Q. And, Mr. Gem, by position do you mean an interest in that
24 bond?

25 A. I mean an interest in that bond.

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Gem - direct

1 THE COURT: Let me just give you an example, just so
2 that I understand. An issue of bond -- let's say, \$15 million
3 in bonds. There are lots of people who can buy individual
4 participations of the bond. Let's say 5 people buy \$10 million
5 of that bond issue, but each of those people would have -- each
6 of the bonds that are given to those people, participations in
7 the bond issue, would have the same ISIN number?

8 THE WITNESS: Exactly.

9 MR. PANOPOULOS: And if I might just direct the Court
10 to Exhibit C. You've anticipated, you know, the next Exhibit.
11 This exhibit -- it's not confidential. It's from public
12 information. It lists the [REDACTED] securities, the ISINs, the bonds
13 that are at issue and that are listed in the writs of
14 attachment and restraining orders and, as you'll see, your
15 Honor, describes who the issuer is, the distribution date, the
16 maturity date and the initial amount of the interest of the
17 issue and the interest. I just note it for the Court's --

18 THE COURT: Thank you.

19 BY MR. PANOPOULOS:

20 Q. Okay. Mr. Gem, if you could proceed, then.

21 A. So given that that is the case, what the first page in
22 Exhibit B is showing is that indeed, if you take this as being
23 an issue on security for total nominal value of 1 billion US
24 dollars, then in this example you could see that we have said
25 at the depository trust incorporation where all the interests

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Gem - direct

1 in that bond must ultimately be immobilized, I would have a
2 broker, for example, holding \$50 million. You would have a
3 custodian -- let's say Citibank of New York, illustratively --
4 for \$500 million, and another custodian -- let's say Bank of
5 New York Mellon -- for 450 million. In that, behind that we
6 would say Clearstream might have a position in that bond on its
7 omnibus account with Citibank New York of say 400 million. And
8 another Citibank customer might have 100 million, giving the
9 total positions of 500 million at Citibank, New York, at DTCC
10 New York. Behind that 400 million that Clearstream banking
11 would have, we might have a number of customers -- in this case
12 three customers -- all having a certain interest.

13 And the point that I would make is that the individual
14 customer accounts are not reflected down the custody stream,
15 but in this omnibus concept, which is generally adopted in the
16 United States market, all of the interests are globalized in
17 single positions cascading down into the ultimate position
18 against the issuer account.

19 Q. And I would ask you, Mr. Gem, in the omnibus account are
20 there subaccounts for each of the securities?

21 A. Effectively there are subaccounts for each of the
22 securities, but not for each of the holders.

23 Q. And are there corresponding cash accounts for each of those
24 securities?

25 A. No, there are not. The cash accounts that the custodians

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Gem - direct

1 would maintain with each other would be typically identical to
2 normal correspondence Nostra accounts.

3 Q. Yes. And if you could simply describe to the Court the
4 next four pages, which are an illustrative --

5 THE COURT: I'm going to have to break for about a
6 half an hour.

7 MR. PANOPOULOS: That's fine, your Honor.

8 THE COURT: So let's take a half an hour. Thank you.

9 (Recess)

10 (Continued on next page)

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Gem - direct

1 MARK GEM, resumed.

2 THE CLERK: The witness is reminded that he is still
3 under oath.

4 THE COURT: Do you understand?

5 THE WITNESS: I understand.

6 BY MR. PANOPOULOS:

7 Q. Your Honor, Mr. Gem, we were in Exhibit B and you had just
8 explained the first chart about what the omnibus account was
9 and we are now on the second page and if you could briefly
10 describe for the court the illustrative transaction on the
11 second page of Exhibit B.

12 A. Yes. The next pages are concerning the main transaction
13 types which we, as a settlement system, would undertake on
14 behalf of our customers.

15 Before turning to the first what we call an internal
16 delivery free of payment, I should emphasize that Clearstream
17 Banking as the custodian are not acting for their own account,
18 rather for the accounts of their customers in settling
19 contracts between parties which have been concluded separately
20 and independently of the settlement system.

21 So in this first example, we take a very simple
22 transaction which is where one customer of Clearstream Banking
23 is delivering securities to another customer of Clearstream
24 Banking delivery free.

25 What this chart is showing is that that would mean

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Gem - direct

1 that the position in the security concern of customer A in the
2 top left-hand portion of the page is reduced or marked down by
3 the amount of the delivery, in this case \$50 million U.S.
4 dollars nominal, and the account of Clearstream's customer C on
5 the top right-hand of the chart is marked up by 50 million U.S.
6 dollars nominal.

7 The important point to note is that there is no change
8 in the positions of the custodians beneath. The position of
9 the Clearstream Banking has at Citibank as its custodian in New
10 York is not changed as a result of that transaction.

11 What is meant by delivery free, it means that there is
12 no compensating cash payment in the books, in this case
13 Clearstream Banking. It may mean, therefore, that the delivery
14 has been made without the change in the beneficial ownership of
15 the customer, of the party who is owning the interest
16 represented by customer A or it may mean that there has been a
17 change of beneficial ownership because the consideration at the
18 conclusion of the sale and purchase agreement has been paid
19 outside of Clearstream Banking.

20 Q. Clarify, Mr. Gem, for the court and for plaintiffs,
21 basically what you are saying is that there is a transfer of a
22 value in securities between the Clearstream customers, but the
23 payment stream that you would expect from the buyer to the
24 seller isn't in Clearstream, it might be somewhere else, for
25 example, Euroclear or some of the other clearing houses?

X86RYPET2

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Gem - direct

1 A. In that example it would not, in fact, it would not be in
2 Euroclear, it may be a commercial bank or, indeed, there may
3 not be a distribution at all, there is no change in beneficial
4 ownership, it maybe the customer of customer A is transferring
5 between two custodians that he employs, but he remains the
6 beneficial owner of the securities. That may also be a
7 possibility.

8 My point is that you cannot conclude that because the
9 delivery is free the beneficial ownership has or has not
10 changed as a consequence.

11 Q. Then turning our attention to the next chart.

12 A. The next chart is the same transaction, but whether
13 delivery free is made not to another Clearstream customer, but
14 to somebody else, in this case to a direct participant at the
15 Depository Trust and Clearing Corporation.

16 So here the customer C would onward deliver 50 million
17 U.S. dollars of shares to in this example I suggested a broker,
18 the point there being it is exactly the same considerations
19 apply in terms of the free character of the delivery, but the
20 difference is that the positions of the custodians downstream
21 are affected because the delivery has occurred outside of
22 Clearstream. So as a consequence, the custody account of
23 Clearstream Banking at Citibank New York is also reduced by 50
24 million, because in this case the delivery is also made to a
25 party who is not a customer of Citibank, Citibank's position at

X86RYPET2

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Gem - direct

1 the Depository Trust Clearing Corporation New York is also
2 reduced by 50 million.

3 Q. Then turning our attention to the third transaction in
4 Exhibit B.

5 A. Yes. The third transaction is very similar to the first,
6 except that it is made against payment. What that means is
7 that the corresponding consideration for in this case the sale
8 of securities from customer C to customer A is settled on the
9 cash side in the books of Clearstream Banking, meaning that
10 Clearstream will take the account, cash account of customer A
11 for the nominal value times the trade price in the security and
12 credit the account of customer C, and that is done
13 simultaneously with the securities delivery, meaning that the
14 two parties are short of what we call finality, that if I pay I
15 get my securities or if I deliver my securities I get paid.

16 Once again, because that is an internal transaction,
17 nothing happens in Clearstream's Banking security balances or
18 cash balances.

19 THE COURT: Why does the account at Clearstream go
20 down to 350 million.

21 THE WITNESS: I'm sorry, your Honor, I used the values
22 regarding from the previous chart so the shares are equal, so
23 they are not reduced in that transaction, they remain at 350
24 million in this example.

25 A. The fourth example is an external delivery against payment,

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Gem - direct

1 meaning that the securities are delivered from a Clearstream
2 customer to somebody who is not a Clearstream customer for
3 payment.

4 What that means is that the custodians in the chain
5 have to manage both the delivery of the securities and the
6 collection of the proceeds in such a way that both parties
7 receive finality.

8 So in this example you see the customer A would be
9 delivering 50 million of securities to custodian B, in this
10 case we suggested illustrative the Bank of New York Mellon as
11 an example, and that means that the accounts of customer A is
12 marked down by 50 million, that the accounts of Bank of New
13 York Mellon is marked up by 50 million at DDCC and,
14 consequently, we see the accounts of Citibank New York is also
15 marked down by that amount.

16 The payment flow is, of course, that at one level Bank
17 of New York Mellon would pay Citibank New York, Citibank New
18 York would credit Clearstream Banking U.S. dollar account at
19 Citibank New York and we would credit the proceeds to our
20 customer, customer A in our books.

21 Q. Turning your attention to Exhibit C.

22 MR. PANOPOULOS: Your Honor, at this point I am going
23 to refer to the writ of attachment, but I could refer to it
24 generically --

25 THE COURT: If we are turning to confidential

Gem - direct

3 (Pause)

5 BY MR. PANOPOULOS:

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1 (Witness excused)

2 MR. PANOPOULOS: Your Honor, I have one further
3 application. If you remember our phone conference on Monday,
4 plaintiffs have served discovery on Clearstream and on
5 Citibank. They indeed served an information subpoena that
6 lists somewhere close to 30 or more questions and testifying
7 subpoenas for people to come and be deposed. We would like to
8 ask the Court to stay any discovery of the restraining
9 notices -- with respect to the restraining notice and with
10 respect to these proceedings of Clearstream, because we think,
11 one, we've provided all the relevant and material information;
12 two, the discovery they have served is burdensome. I think all
13 of it is irrelevant at this point. And really if they have
14 something more specific than asking us who at Clearstream knows
15 all the employees at Clearstream who work on these accounts,
16 maybe we could work something out.

17 And lastly, just to raise that even to provide
18 responses to discovery subpoenas, we would have to come back
19 before the Court because of the banking secrecy laws, which is
20 why we try to make an effort to produce and to talk about
21 everything here.

22 And, if necessary, I'm willing to put Mr. Gem back on
23 the stand and ask him each and every one of these questions in
24 the information subpoena, if it would be necessary, rather than
25 to have to go through additional discovery and all the fighting

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1 that would entail.

2 MS. SCHNEIER: Your Honor, if I could just join in
3 that request. We were also served, in fact, they had already
4 served Citi, we just did not know about it at the time of the
5 conference, with an information subpoena with 40 requests and a
6 document request with 48 requests that I think at the very
7 least is overbroad and calls for things like all documents
8 reflecting communications between Citi and Clearstream.

9 I think, in light of what they've learned today, most
10 of the requests are irrelevant; most of it, you know, would not
11 be in Citi's possession, anyway. And so I join in Clearstream
12 counsel's request that discovery be stayed at this point.

13 MR. VOGEL: Your Honor, I object to the positions
14 taken by both Clearstream and Citibank. I believe I was just
15 trying to ask only a few questions of the witness at
16 Clearstream to try to get into some discovery, and I was met
17 with objections and now I'm met with --

18 THE COURT: Not many.

19 MR. VOGEL: -- a motion to quash all discovery that
20 we've served. So as far as Citibank and Clearstream are
21 concerned, I now know everything I need to know. I just -- I
22 can't agree with that.

23 THE COURT: The truth, as usual, is somewhere in
24 between. The amount of disclosure is extraordinary. And the
25 parties haven't given me all of the discovery. I've heard it

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1 described as enormous and burdensome.

2 On the other hand, the plaintiffs have to be in a
3 position not only to get a restraint, but to get a turnover.
4 And they can't do that without linking, I take it, the funds
5 that have been restrained to the defendant in the case. So
6 they are entitled to some discovery in the process of enforcing
7 their judgment against the defendant.

8 I can't believe, on the other hand, that the discovery
9 requests that were issued are tailored to the information that
10 the plaintiffs now have. And it should be. It shouldn't be
11 omnibus, wonder bus, fishing expedition discovery when the
12 plaintiffs now have a roadmap for what's relevant and what's
13 not relevant.

14 So to ask for all of the employees of Clearstream who
15 have had any contact with [REDACTED] or Citibank in connection with
16 this is not reasonable. And I'm sure that the plaintiffs can
17 draft more reasonable requests for the purpose of enforcing a
18 judgment in Washington.

19 MR. VOGEL: Your Honor, if I could just add, you are
20 correct in light of what happened today, the discovery demands
21 can certainly be more tailored. These demands were prepared
22 before today, so we served obviously as broad as we could
23 because we didn't know anything.

24 THE COURT: So the answer is the outstanding discovery
25 requests are withdrawn without prejudice to service of

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1 appropriately-tailored discovery requests. Yes.

2 MR. PANOPOULOS: Your Honor, that would include the
3 restraining notice served on us through the state court, as
4 well, because it's the same discovery. The Court has the power
5 to stay discovery in the state court that's ancillary to a
6 proceeding in the federal court.

7 THE COURT: Well, hold on. I take it that the
8 plaintiff's intent is to withdraw -- first of all, to withdraw
9 any outstanding discovery requests. With respect to
10 restraining notices that are issued from the state court, it's
11 restraining the same funds, yes?

12 MR. PANOPOULOS: Yes, your Honor.

13 THE COURT: So it's not necessary to withdraw them, so
14 that the one thing that's out there is Citibank has raised an
15 objection. The restraining notice in this Court is not
16 affected because it was issued by the clerk and not by a judge
17 so --

18 MR. PANOPOULOS: There's a *nunc pro tunc* order by
19 Judge Lamberth that takes care of that issue, I believe.

20 THE COURT: Plaintiffs went back to Judge Lamberth?

21 MR. PANOPOULOS: They did, and they got it -- when
22 they served the restraining --

23 THE COURT: They weren't happy?

24 MR. PANOPOULOS: No --

25 THE COURT: They had to go to Washington?

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1 MR. PANOPOULOS: -- they weren't abiding by the
2 Federal Sovereign Immunities Act, your Honor, which required a
3 court order; they didn't have it. But they went in front of
4 Judge Lamberth, got a *nunc pro tunc* order just two days ago
5 that's retroactive to March 10th. So I think the issue is
6 moot.

7 THE COURT: Okay. I'm not quite sure why plaintiffs
8 would have gone to Judge Lamberth rather than to deal with a
9 notice that came from the clerk of this Court, but so be it.
10 Yes.

11 MR. VOGEL: Your Honor, I think I can answer that.
12 The reason for it was that there were other discovery demands
13 and executions served prior to the commencement of the
14 execution last week in this Court. And it was done in Chicago,
15 I believe, and in California. And this dated back to March 10.
16 And because Citibank's attorneys were so good at researching
17 their brief, it showed a technical defect in all of these other
18 executions. So counsel down in D.C. decided that might as well
19 just get one from the beginning of time and make everything
20 kosher.

21 THE COURT: Meaning no disrespect?

22 MR. VOGEL: No disrespect at all, your Honor.

23 THE COURT: All right. Well, I'm right then. All of
24 the discovery requests are withdrawn. The state restraints,
25 restraining notices, stay. I'll vacate -- are these two the

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1 two securities covered by the state order?

2 MR. PANOPOULOS: Yes, it's exactly the same as the --

3 THE COURT: DM51 and BK38?

4 MR. PANOPOULOS: Yes, your Honor.

5 THE COURT: Parties agree. Do you want to withdraw
6 the restraint on those two, Mr. Vogel, from the state court?

7 MR. VOGEL: Yes. As I said, but with respect to those
8 two securities, we consent to it be deemed withdrawn.

9 THE COURT: Okay. Why don't you hand up a proposed
10 order. Show it to the plaintiff.

11 MR. PANOPOULOS: Yes, your Honor, I will.

12 THE COURT: Show it to the plaintiff, and then I'll
13 sign it. And the order that I entered earlier, which set a
14 briefing schedule and all, is that now academic?

15 MR. PANOPOULOS: It is academic, I believe so, your
16 Honor. There's one housekeeping matter that has to do with
17 keeping the under seal. And that, you know, the hearing today
18 and the testimony today should only be used for the purposes of
19 this proceeding. You know, what we don't want is for the
20 plaintiffs to take, you know, these transcripts and these
21 documents and to go to any other number of proceedings that are
22 outside of this proceeding and disseminate them.

23 But other than that housekeeping matter, that's all
24 there is, and I don't think we need a hearing next Thursday,
25 and I'll go get the order now, your Honor.

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1 THE COURT: Well, I thought -- I didn't say it. I
2 sealed the proceedings because they deal with confidential
3 material, after we went through the public part. And so the
4 transcript of the sealed proceeding is itself sealed. The
5 parties have access to the transcript.

6 Shouldn't that be subject to the protective order that
7 Judge Lamberth issued or subject to all of the same
8 restrictions in that order? And that order was a pretty good
9 order, I thought.

10 MR. PANOPOULOS: Yes, your Honor. The only loophole
11 in that order is that it allows for other parties related to
12 the main case in D.C. to have access to that information if the
13 plaintiffs disseminate it to them. For example -- well, in
14 some ways I'm theorizing, but there's a possibility that
15 plaintiffs could go to one of their actions in the Northern
16 District of California, where they've sued other financial
17 institutions, and they could, you know, somehow use these
18 transcripts under the guise of the protective order.

19 I'm being handed something that says, Any other
20 person -- right. Under the protective order 5E, says, Any
21 other person to whom disclosure is required in order to pursue
22 proceedings incident to efforts to collect the judgments
23 entered in Greenbaum Peterson litigation. And we think that
24 that's too broad; that the disclosure here of Clearstream's
25 banking information pursuant to the banking secrecy laws of

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1 Luxembourg and your Honor's orders should not be subject to
2 that dissemination. That's what we think and that's what we're
3 applying to the Court for.

4 I mean obviously, you know, if they want to go after
5 one of the banks we've talked about today before this Court in
6 this proceeding, that's one matter. But to go after some oil
7 company or some other financial institution in some other
8 proceeding that's related to this, it's another, your Honor.

9 THE COURT: I thought the plaintiffs were fairly
10 reasonable. I thought that the plaintiffs thought that Judge
11 Lamberth thought it was fairly restrictive; I thought that
12 that's why the parties were concerned even about the disclosure
13 of these materials from what happened before Judge Lamberth to
14 Clearstream, and needed an order from me before this was
15 released to Clearstream.

16 It would seem to me, and correct me if I'm wrong, that
17 this is sealed; so access is to the parties who have access to
18 the materials that Judge Lamberth has said these are the
19 parties with access or permitted access limited to the purposes
20 that Judge Lamberth set out. And that if it's going to be
21 accessed to any further person, it should only be with the
22 permission of Judge Lamberth, preferably Judge Lamberth, or
23 this Court.

24 MR. PANOPOULOS: Yes, your Honor. Again, 5A also has,
25 The attorneys including their assistants, would also have

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1 access to the information. Again, just to show another
2 loophole in the order.

3 THE COURT: Oh, I think attorneys know how to deal,
4 and so do their assistants, with protective orders, matters
5 under seal.

6 MR. VOGEL: I can tell you, in fact, your Honor, that
7 I have two temporary summer law clerks working for me who are
8 not normally with the firm, and I've had them both sign the
9 protective order just to be super careful. So I think that I
10 can understand Clearstream's concern, but I think that Judge
11 Lamberth's protective order adequately protects Clearstream and
12 everyone concerned.

13 THE COURT: All right. I don't believe that, by the
14 way, a court order on confidentiality restricts the Court or
15 court personnel. I don't believe that we have to sign the
16 protective order.

17 Why don't you take five minutes, show the proposed
18 order to the plaintiff. It seems to me -- are there any other
19 orders that I have to issue? That order should be a final
20 order in the sense of it should vacate the prior scheduling
21 order for me. And if there are any other issues that I should
22 deal with in the order, think about it, put them in.

23 MR. PANOPOULOS: In that case, your Honor, we'll work
24 on it on a laptop. And if it's possible, could we print the
25 order using the Court's facilities and printer?

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1 THE COURT: How do you propose to do that? If you put
2 it on a laptop, you're going to download it to a disk?

3 MR. PANOPOULOS: Use a flash drive.

4 THE COURT: Maybe some of my law clerks --

5 MR. PANOPOULOS: It's very simple, your Honor. It's
6 very simple.

7 THE COURT: Well, you do that. You can pass it up.

8 MR. PANOPOULOS: Okay, your Honor. We'll take five
9 minutes. Thank you.

10 (Recess)

11 THE COURT: I've read the proposed order; I've signed
12 it. We'll make a copy, I should have done it before I came
13 down, and give it to you and see that it's filed. So that ends
14 this proceeding.

15 There was a set of the documents that I had been given
16 on the order to show cause on a disk. Were the originals filed
17 under seal?

18 MS. SCHNEIER: We were told, your Honor, that if
19 you're filing documents under seal, the procedure now is to put
20 them on a disk. If you want, we can give you a hard copy, we
21 printed them out. But that's what the clerk's office told us
22 to do.

23 THE COURT: Okay. Well, I'll file this under seal
24 then.

25 MS. SCHNEIER: I think we filed that under seal.

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1 That's a courtesy copy for you.

2 THE COURT: Oh, you did file already.

3 MS. SCHNEIER: Yes, yes.

4 THE COURT: I thought I had to sign an order.

5 MS. SCHNEIER: They took it.

6 THE COURT: They took it under seal.

7 MS. SCHNEIER: Yes.

8 THE COURT: I don't see any reason for me to keep the
9 courtesy copy. I'll give them back to you, along with both
10 notebooks with all of the sealed materials.

11 MR. PANOPOULOS: Your Honor, should we file under seal
12 on a disk with the material in the notebooks?

13 THE COURT: I don't see any reason to.

14 MR. PANOPOULOS: Okay. Thank you, your Honor.

15 THE COURT: Usually exhibits don't get filed.

16 MR. PANOPOULOS: Okay, your Honor. Thank you.

17 THE COURT: We'll make a copy of the order. And if
18 you wait around in court, you can have copies and we'll see
19 that the original gets filed.

20 MR. PANOPOULOS: I will.

21 THE COURT: We'll also return to you the flash drive.

22 MR. PANOPOULOS: We have it.

23 THE COURT: Okay.

24 MR. PANOPOULOS: Very convenient device, your Honor.

25 THE COURT: Okay. I'll take your word for it. That

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1 ends this proceeding. If there are further motions, I assume
2 that they'll go to the Part 1 judge. So I appreciate the
3 quality and professionalism of all of the lawyers involved.
4 Hope to see you on another case.

5 MR. PANOPOULOS: Thank you, your Honor.

6 MR. VOGEL: Thank you, your Honor.

7 MS. SCHNEIER: Thank you for making yourself
8 available.

9 MR. PANOPOULOS: I'll wait in the back of the
10 courtroom, your Honor.

11 THE COURT: Fine.

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